



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

AUG 02 2007

Uniform Issue List No. 414.08-00

Attention:: *****

Legend:

Church A = *****
Congregation B = *****
Region C = *****

College

= *****

State D

= *****

State E

= *****

City F

= *****

Plan X

= *****

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This is in response to a letter dated December 28, 2005, in which your authorized representative requested rulings on your behalf under section 414(e) of the Internal Revenue Code ("Code").

In support of your ruling requests you have submitted the following statements and information:

The College is a not-for-profit corporation chartered under the laws of State D in ****. The College was established by members of Congregation B, a group of religious individuals founded in City F under the auspices of, and affiliated with, Church A.

The College's mission is to further the teachings and works of Church A by bestowing upon students a respect for human dignity and a concern for the marginalized in our society through a liberal arts curriculum. Congregation B's ministry extends to the fields of education, hospitals, nursing homes, childcare, and work in local churches. The founding of the College and its continuing mission is a part of Congregation B's education ministry. The College's corporate bylaws provide that, as a Church A liberal arts college, the curriculum is enriched by Church A tradition and values, as reflected in the philosophy of Congregation B. The bylaws further provide that the College shall be managed and operated in accordance with the tradition, teachings, and the Laws of Church A, and the constitution, directives and philosophy of Congregation B.

Region C, the regional headquarters of Congregation B in the United States is a not-for-profit corporation chartered in State E and located in City F. The sole corporate members of the College are the head of Region C and its regional council. Powers reserved to the corporate members under the College's charter and bylaws include, but are not limited to, the power to: (a), approve recommended changes in the philosophy, objectives and purposes of the College; (b), interview and approve semi-finalists for the office of College President; (c), amend, alter, modify or repeal the College's Articles of Incorporation; and (d) approve nominees to the College's Board of Trustees, prior to their election or re-election by the Board of Trustees.

The corporate powers of the College are vested in its Board of Trustees ("Board"), subject to the reservation of powers to the corporate members of the College under its charter and bylaws. Trustees are elected by a majority vote of the Board from nominees approved by the members. Any trustee may be removed by a majority vote of the members of the College after consultation with the Board. Powers exercised by the Board include, but are not limited to, the power to: (1), review the College's mission and purpose; (2), choose, evaluate and supervise the College President; (3), approve institutional policies bearing on the appointment, promotion, tenure, and dismissal of faculty members; and (4), control the general financial administration of the College and supervise its funds. Of the 23 individuals listed as members of the Board, 17 are adherents of Church A and 3 belong to a Congregation such as Congregation B.

Both Congregation B and the College are listed in the Official Directory of Church A in the United States. The Internal Revenue Service has determined that any organization listed or appearing in the Official Directory of Church A also is an organization that is described in Code § 501(c)(3) and exempt from tax under section 501(a).

Effective July 1, , the College established Plan X, a nonqualified retirement incentive plan for tenured faculty. Plan X is funded from the College's general budget, and provides eligible faculty with funds for a single-sum payment of \$ for each year of service with the College, subsidized health care coverage, and membership in the College's sports and recreation center.

Plan X is administered by an administrative committee ("Committee"), created by the Board of Trustees for the exclusive purpose of administering the Plan. The Committee serves at the pleasure of the Board, and has authority to determine eligibility for Plan benefits, to construe the terms of the Plan, and to establish policies and rules for Plan administration. Decisions of the Committee regarding a tenured faculty member's eligibility for Plan benefits are final and binding. The Committee is comprised of three members, one of whom must be an employee of the College; another must be a member of the Board; and the final member may be either an employee of the College, a member of the Board, or an adherent of the Church A faith, if not an employee of the College or a Board member.

Based on the preceding statements and representations, you request a ruling that from and after its effective date of July 1, , Plan X is a church plan within the meaning of section 414(e) of the Code.

Section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches that is exempt from taxation under section 501.

Section 414(e)(3)(A) of the Code provides that a plan will be treated as a church plan if it is maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or convention or association of churches shall include an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) of the Code provides that an organization, whether a civil law corporation or otherwise, is "associated" with a church or convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization that is not itself a church or convention or association of churches to have a church plan under section 414(e) of the Code, that organization

must establish that its employees are employees or deemed employees of the church or convention or association of churches under section 414(e)(3)(B). Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; (2) is controlled by or associated with a church or convention or association of churches; and (3) provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A).

In this case, the College, a not-for-profit corporation chartered under the laws of State D, was established by members of Congregation B, a group of religious individuals founded under the auspices of, and affiliated with, Church A. The College's mission is to further the teachings, tenets, and works of Church A by bestowing upon students a respect for human dignity and a concern for the marginalized in society. The founding of the College and its continuing mission is a part of Congregation B's education ministry. As a Church A liberal arts college, the curriculum is enriched by Church A tradition and values, as reflected in the philosophy of Congregation B, and is managed and operated in accordance with the tradition, teachings, and the Laws of Church A, and the constitution, directives and philosophy of Congregation B.

In addition, both Congregation B and the College are listed in the Official Directory for Church A in the United States. The Service has determined that organizations listed or appearing in the Church A Official Directory are organizations described in Code § 501(c)(3) and exempt from tax under Code § 501(a). Therefore, because of its corporate structure and philosophical orientation, and because of its listing in Church A's Official Directory, it is concluded that the College shares common religious bonds and convictions with Church A and Congregation B and is "associated" with Church A and Congregation B for purposes of section 414(e)(3)(D) of the church plan rules.

Moreover, under the rule of Code § 414(e)(3)(B), if an organization is controlled by or associated with a church or convention or association of churches as provided under § 414(e)(3)(D), the employees of that organization are deemed to be employees of that church or convention or association of churches. Accordingly, the employees of the College in this case also are considered to be Church A employees for purposes of the church plan rules of Code § 414(e). Conversely, under the rule of Code § 414(e)(3)(C), Church A is deemed to be the employer of the College's employees.

Having established that College employees in this case are deemed to be employees of Church A, the question remaining is whether or not the plan in question is administered by an organization the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches.

In this case, Plan X is administered by a committee established exclusively for that particular purpose. The Committee serves at the pleasure of the Board, and has

authority to determine eligibility for Plan benefits, to construe the terms of the Plan, and to establish policies and rules for Plan administration. Decisions of the Committee regarding a tenured faculty member's eligibility for Plan benefits are final and binding.

Accordingly, it is ruled that from and after its July 1, effective date, Plan X is a church plan within the meaning of section 414(e) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of the Code or regulations which may be applicable thereto.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact SE:T:EP:RA:T1
for further information.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

Sincerely,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

- ▶ Deleted Copy of this Private Letter Ruling
- ▶ Notice 437, "Notice of Intention to Disclose"
- ▶ Copy of Cover Letter to Your Authorized Representative